

DONALD L. FULGHAM

IBLA 79-437

Decided August 30, 1979

Appeal from decision of Montana State Office, Bureau of Land Management, declaring placer mining claims M MC 8806 and M MC 8807 abandoned and void.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally – Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment – Mining Claims: Recordation

The regulation, 43 CFR 3833.2-1(b)(1), requiring evidence of assessment work to be filed prior to December 31 of the year following location of the claim, is mandatory. Failure to comply therewith must result in a finding that the claim has been abandoned.

APPEARANCES: Thomas D. Fulgham, Billings, Montana, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Donald L. Fulgham appeals 1/ the decision of the Montana State Office, Bureau of Land Management (BLM), declaring two placer mining claims abandoned under the provisions of the Federal Land Policy and Management Act of 1976 (FLPMA), infra.

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1/ By reason of appellant's ill health, the notice of appeal and statement of reasons therefore were filed by his son, Thomas D. Fulgham, on appellant's behalf. 43 CFR 1.3(3)(i).

Appellant located the Fulgham I (M MC 8806) and the Fulgham II (M MC 8807) on October 20 and 18, 1977, respectively, 2/ as evidenced by county certificates of recordation.

By decision dated April 13, 1979, the mining claims were declared abandoned pursuant to FLPMA section 314, 90 Stat. 2769, 43 U.S.C. §§ 1744(a)(1) and (2) (1976), as implemented by 43 CFR 3833.2-1(b)(1), 3/ for failure to comply therewith. That regulation provides as follows:

§ 3833.2-1 When filing required.

(b)(1) The owner of an unpatented mining claim located after October 21, 1976, shall, prior to December 31 of each year following the calendar year in which such claim was located, file in the proper BLM office evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim.

As noted in the decision, the assessment year ended September 1, 1978. 30 U.S.C. § 28 (1976). Appellant was thus required to file the affidavits before December 30, 1978. The claims were therefore held abandoned pursuant to 43 CFR 3833.4(a), which provides: "§ 3833.4 Failure to file. (a) The failure to file such instruments as are required by §§ 3833.1 and 3833.2 within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill site, or tunnel site and it shall be void."

In the statement of reasons for appeal, appellant admits that he was unaware of the provisions of FLPMA until 1979, and that he overlooked the assessment work filing requirements. Appellant further states that a Forest Service permittee holds small acreage situated at the juncture of the subject mining claims, and that this fact will adversely affect his ability to perform "relocation work." Finally, appellant states that he attempted to comply with pertinent regulations, and requests this Board to, in effect, reverse the decision to prevent undue hardship to him.

[1] We affirm the decision. The regulation is mandatory, and failure to comply therewith must result in a finding of abandonment. Accord, Dale C. DeLor, 40 IBLA 88 (1979); Juan Munoz, 39 IBLA 72 (1979); Roy M. Byram, 39 IBLA 112 (1978); Roy S. Coupey, 35 IBLA 112 (1978).

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2/ Fulgham I is situated in T. 13 N., R. 8 W., SE 1/4 sec. 17. Fulgham II is situated in T. 13 N., R. 8 W., NW 1/4, SW 1/4 sec. 16.

3/ The decision erroneously cites 43 CFR 3833.2-1(a)(i). That regulation applies to mining claims located prior to October 21, 1976, the date FLPMA was enacted into law.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques  
Administrative Judge

We concur.

Anne Poindexter Lewis  
Administrative Judge

Edward W. Stuebing  
Administrative Judge

